

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3038

Heard in Montreal, Tuesday, March 9, 1999

concerning

CANPAR

and

TRANSPORTATION COMMUNICATIONS UNION

EX PARTE

DISPUTE:

Appeal of discipline assessed to Mr. René Pichette of Montreal who was assessed a 3 day suspension plus 4 demerits regarding the alleged failure to follow instructions from a supervisor.

UNION'S STATEMENT OF ISSUE:

The Union contends that on December 18, 1998, Mr. Pichette was interviewed to determine the causes and his responsibility in the manner of the failure to follow instructions from a supervisor. During the interview the grievor indicated clearly that his method was used for 20 years by him and by the drivers. He also indicated that this method was taught by supervisor J. Bordeleau and Cantacessa.

Following the interview the grievor was given a 3 day suspension plus 4 demerits as discipline.

The disciplinary measure is unjustified, extreme and without merit.

The Union requests that Mr. René Pichette be reimbursed for the 3 day suspension plus overtime that he would have made if he would not have been suspended and also that the demerits be stricken from his record.

The Company declined the Union's request.

FOR THE UNION:

(SGD.) R. NADEAU
DIVISION VICE-PRESIDENT

There appeared on behalf of the Company:

P. D. MacLeod	– Vice-President, Operations, Toronto
R. Dupuis	– Terminal Manager, Montreal
P. Cunningham	– P&D Manager, Montreal

And on behalf of the Union:

D. Dunster	– Executive Vice-President, Ottawa
R. Nadeau	– Divisional Representative, Quebec
F. Scrivo	– Witness
J. Scrivo	– Witness
R. Martin	– Witness
R. Pichette	– Grievor

AWARD OF THE ARBITRATOR

The Company alleges that the grievor violated a policy whereby employees are to keep the ignition key of their truck and the separate key which locks the front and rear doors to the freight storage area of their vehicles on a single key ring. It is common ground that during the course of Mr. Pichette's tour of duty on December 10, 1997, while accompanied by Supervisor P. Cunningham, the grievor did carry his bulkhead key separately from his truck ignition key. That fact was pointed out to him by Mr. Cunningham at or about 10:30 a.m., coupled with the suggestion or instruction that he change his practice.

It appears that Mr. Pichette responded that he had in fact been instructed otherwise by two other supervisors of the same rank as Mr. Cunningham. That assertion is confirmed in statements taken during the course of the investigation. It appears, nevertheless, that Mr. Cunningham continued to note in writing throughout the day whenever the grievor kept his bulkhead key separate, which Mr. Pichette did without exception. Following a subsequent investigation Mr. Pichette was assessed four demerits, in addition to a three day suspension for failing to follow Mr. Cunningham's instructions.

The Arbitrator accepts that it is within the prerogatives of the Company to insist that its drivers keep their bulkhead keys and truck ignition keys on a single key ring. If, as the Company's representative asserted at the hearing, looking for a separate key in one's pocket repeatedly over the course of the day can create inefficiencies of time, there may well be valid business reasons for the policy which the Company maintains Mr. Cunningham was attempting to enforce. However, the evidence in the instant case falls far short of the standard necessary for the enforcement of a Company rule by the assessment of discipline. The Arbitrator accepts the principles asserted by the Union, as reflected in the long respected award **KVP Co. Ltd.** (1965), 60 L.A.C. 73 (Robinson), which posits a number of conditions generally considered necessary to the enforcement of a rule through discipline. Among those conditions are that the rule be clear, that it be brought to the attention of the employee before it is acted upon, and that it be enforced in a consistent manner.

The material before the Arbitrator confirms that Mr. Pichette, and it appears a number of other drivers in Montreal, were specifically instructed by other supervisors to follow a practice diametrically opposed to the instructions being offered by Mr. Cunningham to Mr. Pichette on December 10, 1997. The record of the investigation reveals that Supervisor J. Cantacessa, by his own admission, previously advised Mr. Pichette that he should keep his bulkhead key separately in his pocket, to ensure that he not be locked out of his truck in the event that the ignition key should be forgotten inside the cab. There appears to be no dispute that yet another supervisor, other than Mr. Cunningham, had given the same instructions to other employees.

The Arbitrator has some concern with the corrective approach taken by Mr. Cunningham as reflected in the evidence, and the arguably misleading nature of his report to his own superiors. The Company's brief asserts that according to Mr. Cunningham's account, he instructed Mr. Pichette some twenty times during the course of the day to keep the two keys on a single ring. In his evidence before the Arbitrator, however, Mr. Cunningham gave a different account. According to his evidence, he simply made written notations of the ongoing failure of Mr. Pichette to conform to his instruction, apparently given to him verbally once during the course of the morning. The notations were apparently made on a performance review sheet on a clipboard as Mr. Cunningham accompanied Mr. Pichette on his drive. Mr. Cunningham asserted that in his view Mr. Pichette should have taken each notation as the equivalent of a verbal instruction, and that he need only have looked at the clipboard to see what Mr. Cunningham was writing. In the result, Mr. Cunningham's report to his own superiors elevated the incident to something resembling a series of insubordinate refusals to follow instructions repeatedly by Mr. Pichette, a conclusion simply not sustained on the evidence. The issue was discussed once in the morning, and it is far from clear that Mr. Cunningham ever gave Mr. Pichette a clear directive to place the two keys on a single ring, failing which he would be subject to discipline. It appears that it was only at the conclusion of their ride together that Mr. Cunningham made any utterance to the effect that Mr. Pichette might be liable to discipline for his practice concerning the separation of his keys.

It is, of course, arguable that an employee of twenty years' service should simply follow the suggestion of a supervisor, even where that suggestion runs counter to directions from other supervisors. However, it remains incumbent upon any member of management who intends to bring disciplinary consequences to bear on an individual to clearly communicate an order or instruction in unequivocal terms, and to reinforce the instruction if it is visibly not complied with. Firstly, in the instant case it is not clear to the Arbitrator that the words used by Mr.

Cunningham when explaining to Mr. Pichette that it would be preferable to keep both keys on a single ring were in the nature of a clear and unequivocal directive. Further, while Mr. Cunningham might wish to characterize the twenty subsequent incidents of disregard of his suggestion by Mr. Pichette as repeated insubordination, it is equally arguable that as Mr. Cunningham said nothing, Mr. Pichette might well have concluded that Mr. Cunningham was in fact acquiescing in a practice which had been specifically endorsed by two other supervisors of equal rank.

In all of the circumstances the Arbitrator cannot see any basis for the assessment of discipline against Mr. Pichette on the facts disclosed. While, as noted above, it is well within the purview of the Company to adopt and properly enforce a rule with respect to the handling of keys, it must do so with proper notice and in a clear and consistent manner before visiting disciplinary consequences upon employees for non-compliance. That has not occurred in the case before me.

The grievance is therefore allowed. The Arbitrator directs that the demerits and suspension assessed against the grievor be struck from his record and that he be compensated for all wages and benefits lost.

15 March 1999

(signed) MICHEL G. PICHER
ARBITRATOR